

**DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

JOSEPH ELLIOT JR.,

Plaintiff,

v.

**FRANKIE ORTIZ, MOSES FRANCIS,
NAEMAH DANIEL, AND LESTER
MITCHELL,¹**

Defendants.

Civil Action No. 21-0291

Appearances:

Joseph Elliot Jr.

Pro Se

Venetia H. Velazquez, Esq.

St. Croix, U.S.V.I.

For Defendants

ORDER

THIS MATTER comes before the Court on Magistrate Judge Ruth Miller’s “Order and Report and Recommendation” (Dkt. No. 37); Defendants’ First “Motion to Dismiss For Lack of Jurisdiction Or, Alternatively, For Failure to State A Claim” (Dkt. No. 19); and Defendants’ Second “Motion to Dismiss for Lack of Jurisdiction Or, Alternatively, for Failure to State a Claim” (Dkt. No. 54). For the reasons stated in the accompanying Memorandum Opinion, filed contemporaneously herewith, it is hereby

ORDERED that Magistrate Judge Ruth Miller’s Report and Recommendation (Dkt. No. 37) is **ADOPTED IN PART AS MODIFIED AND REJECTED IN PART**; and it is further

ORDERED that Plaintiff’s claims against Defendants in their official capacities are **DISMISSED WITHOUT PREJUDICE**; and it is further

¹ All Defendants are sued individually and in their official capacities within the Virgin Islands Police Department. (Dkt. No. 5 at 1-2).

ORDERED that Plaintiff's claims against Defendants Naemah Daniel and Lester Mitchell in their individual capacities are **DISMISSED WITHOUT PREJUDICE**; and it is further

ORDERED that Plaintiff's claims against Defendants Frankie Ortiz and Moses Francis in their individual capacities are allowed to **PROCEED**; and it is further

ORDERED that Plaintiff shall have up to and including **July 11, 2024** within which to file an amended complaint that addresses the deficiencies that the Court identified in its accompanying Memorandum Opinion; and it is further

ORDERED that in addressing the deficiencies identified by the Court, Plaintiff is not granted leave to add claims beyond those already asserted in his First Amended Complaint (Dkt. No. 5); and it is further

ORDERED that Defendants' First "Motion to Dismiss For Lack of Jurisdiction Or, Alternatively, For Failure to State A Claim" (Dkt. No. 19) is **DENIED**; and it is further

ORDERED that Defendants' Second "Motion to Dismiss for Lack of Jurisdiction Or, Alternatively, for Failure to State a Claim" (Dkt. No. 54) is **DENIED**.

SO ORDERED.

Date: June 12, 2024

_____/s/_____
WILMA A. LEWIS
District Judge